

Claimant has worked for respondent for 25 years. He has a history of low back problems. On February 15, 2001, Dr. Clymer performed a L5-S1 hemilaminectomy and discectomy on claimant. That surgery was successful and claimant was able to return to his same job with respondent unloading overweight packages. Claimant continued working

for respondent without difficulty until approximately October 2002. This was the start of respondent's busy season and, in addition, claimant's unit was understaffed. This required claimant to work faster unloading packages weighing between 70 and 150 pounds.

During this time claimant "just started getting real fatigued, kind of felt kind of weakish in my back like I did before, you know."¹ On or about October 17, 2002, claimant went to work and described: "I went to get out of my car, I went to stand up, and I couldn't stand up all the way for nothing. I hobbled into work and told Rob Picairn (ph) that I couldn't work today, I couldn't even straighten up."²

The following day claimant began treating with a chiropractor, Dr. Steve W. Baker. On November 8, 2002, Dr. Baker released claimant to return to work effective Monday, November 11, 2002 stating "In my opinion Mr. Paterson is physically capable of lifting at least 70 pounds of weight on a regular basis." However, before claimant was permitted to return to work he was sent to Dr. Gary Legler by respondent for a return to work evaluation. Dr. Legler determined that claimant was unable to meet the lifting requirements of the job and recommended work hardening. Claimant has not worked since approximately October 16, 2002.

On January 23, 2003, claimant was examined by P. Brent Koprivica, M.D. In his report of that date, Dr. Koprivica concluded:

1. Mr. Paterson's lifting activities where he is lifting overweight packages at United Parcel Service represents an activity which is competent to result in permanent aggravating injury to his lumbar condition. It is my opinion that Mr. Paterson did sustain cumulative injury from the heavy lifting performed at work which has resulted in the current lumbar condition which is causing his current impairment.

I would clearly point out that Mr. Paterson did not sustain an injury by merely exiting his car. His history is very clear that he had progressive difficulties for at least a couple of weeks associated with his lifting activities before he was unable to straighten up. It is my opinion that the work activities are the substantial factor producing the injury that is currently present.

¹ P.H. Trans. at 9.

² P.H. Trans. at 10.

My concern is that Mr. Paterson may have a recurrent disk herniation at this point.³

The opinions expressed by Dr. Koprivica are not only the most recent but are also the most credible on the question of causation. The purpose of the evaluation by Dr. Legler was to determine claimant's ability to return to work. Dr. Legler only addressed the causation issue "by history." Therefore, the statement in his report that "this was a non work related injury" appears to relate only to the fact that claimant's symptoms were the result of claimant "getting out of his car."

Respondent argues that this case is both factually and legally similar to *Martin*.⁴ In its brief, respondent quotes the following from the *Martin* opinion:

Considering the history of claimant's back problems, it is obvious that almost any everyday activity would have a tendency to aggravate his condition, i.e., bending over to tie his shoes, getting up to adjust the television, or exiting from his own truck while on a vacation trip. This is a risk that is personal to the worker and not compensable.⁵

However, in this case there is no medical opinion that almost any everyday activity would have tendency to aggravate claimant's condition. In fact, respondent has not presented any medical opinion contradicting Dr. Koprivica's opinion "... that Mr. Paterson did sustain cumulative trauma injury from the heavy lifting performed at work which has resulted in the current lumbar condition which is causing his current impairment. . . and . . . that the work activities are the substantial factor producing the injury that is currently present. . ." ⁶

Based upon the record compiled to date, the Board finds that the ALJ's order denying claimant's preliminary benefits of medical treatment and temporary total disability compensation should be reversed.

WHEREFORE, the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated February 19, 2003, is hereby reversed and remanded to the Administrative Law Judge for further orders consistent herewith.

³ P. Brent Koprivica's IME Report at 7 (Jan. 23, 2003).

⁴ *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 198 (1980).

⁵ *Id.* at 300.

⁶ P. Brent Koprivica's IME Report at 7 (Jan. 23, 2003).

IT IS SO ORDERED.

Dated this _____ day of May 2003.

BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant
Stephanie Warmund, Attorney for Respondent and Insurance Carrier
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation